

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-120351
	:	TRIAL NO. B-9706761
Respondent-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
GARY L. HUGHBANKS, JR.,	:	
Petitioner-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Petitioner-appellant Gary L. Hughbanks, Jr., appeals from the Hamilton County Common Pleas Court's judgment dismissing his petition seeking postconviction relief pursuant to R.C. 2953.21 et seq. We affirm the court's judgment.

Hughbanks was convicted in 1998 upon jury verdicts finding him guilty of two counts of aggravated murder and a single count of aggravated burglary. For each aggravated murder, he was sentenced to death. He unsuccessfully challenged his convictions in direct appeals to this court and to the Ohio Supreme Court, *State v. Hughbanks*, 1st Dist. No. C-980595 (Dec. 3, 1999), *aff'd*, 99 Ohio St.3d 365, 2003-Ohio-4121, 792 N.E.2d 1081, and in postconviction petitions filed in 2000, 2003, and 2010. *See State v. Hughbanks*, 1st Dist. No. C-010372, 2003-Ohio-187, *appeal not accepted*, 100 Ohio St.3d 1484, 2003-Ohio-5992, 798 N.E.2d 1093; *State v. Hughbanks*, 159 Ohio App.3d 257, 2004-Ohio-6429, 823 N.E.2d 544, *appeal not*

*accepted*, 105 Ohio St.3d 1500, 2005-Ohio-1666, 825 N.E.2d 623; *State v. Hughbanks*, 1st Dist. No. C-070773 (Sept. 3, 2008), *appeal not accepted*, 121 Ohio St.3d 1425, 2009-Ohio-1296, 903 N.E.2d 325. In this appeal from the dismissal of his 2010 postconviction petition, Hughbanks presents ten assignments of error.

We overrule the first assignment of error, challenging the common pleas court's refusal to declare the postconviction statutes unconstitutional. We have long held that the postconviction statutes comport with the dictates of due process as guaranteed under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, the Supremacy Clause of the federal constitution, the doctrine of separation of powers embodied in the state and federal constitutions, and the "due course of law" and "open courts" provisions contained in Article I, Section 16 of the Ohio Constitution. *See State v. Bies*, 1st Dist. No. C-020306, 2003-Ohio-442, at ¶ 12-15; *State v. Fautenberry*, 1st Dist. No. C-971017, 1998 Ohio App. LEXIS 6415 (Dec. 31, 1998).

The balance of the assignments of error challenge the common pleas court's dismissal of Hughbanks's postconviction petition, the consequent denial of the relief sought in each of his postconviction claims, and the court's refusal to permit the "factual development" of his claims by affording him discovery or the funding for experts. We overrule the assignments of error upon our determination that the common pleas court had no jurisdiction to entertain Hughbanks's postconviction claims.

The postconviction statutes did not confer upon on the common pleas court jurisdiction to entertain Hughbanks's postconviction petition, because he did not satisfy either the time restrictions of R.C. 2953.21(A)(2) or the jurisdictional requirements of R.C. 2953.23. His 2010 petition represented his third request for postconviction relief and was filed well after the time afforded under R.C.

2953.21(A)(2) had expired. And R.C. 2953.23 precluded the common pleas court from entertaining Hughbanks's tardy and successive petition, when he failed to demonstrate by clear and convincing evidence that, "but for" the claimed constitutional errors, "no reasonable factfinder would have found [him] guilty of the offense[s] of which [he] was convicted or \* \* \* would have found [him] eligible for the death sentence." *See* R.C. 2953.23(A)(1)(b).

A trial court retains jurisdiction to correct a void judgment. *See State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶ 18-19. But the claimed constitutional deprivations, even if demonstrated, would not have rendered Hughbanks's judgment of conviction void.

Because the common pleas court had no jurisdiction to entertain Hughbanks's postconviction claims, his petition was subject to dismissal. *See* R.C. 2953.21(C) and 2953.23(A). Because his petition was subject to dismissal, Hughbanks was not entitled to discovery or to the funding for experts to develop his postconviction claims. *See Bies*, 1st Dist. No. C-020306, 2003-Ohio-442, at ¶ 9-11.

We, therefore, hold that the common pleas court did not err in declining to hold the postconviction statutes unconstitutional, in dismissing Hughbanks's postconviction petition, or in refusing to afford him discovery. Accordingly, we affirm the court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., DINKELACKER and FISCHER, JJ.**

To the clerk:

Enter upon the journal of the court on March 6, 2013  
per order of the court \_\_\_\_\_.  
Presiding Judge